

NOV 14 2005

PTO/SB/64 (10-05)

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
INK-039

First named inventor: Drzaic

Application No.: 09/289,507

Art Unit: 2673

Filed: April 9, 1999

Examiner: Nguyen, Jimmy H.

Title: FULL COLOR REFLECTIVE DISPLAY WITH MULTICHROMATIC SUB-PIXELS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

11/15/2005 EFLORES 00000059 09289507
01 FC:2453 750.00 DA

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 750 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of 14 Replacement sheets of drawings (identify type of reply):

- ☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ 700

- ☒ has been paid previously on June 3, 2005
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

09289507

0114524885 EFLORES 00000059 501162 750.00 DA

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

David J. Cole

Signature

November 9, 2005

Date

David J. Cole

Typed or printed name

29629

Registration Number, if applicable

E Ink Corporation, 733 Concord Avenue

Address

617-499-6069

Telephone Number

Cambridge MA 02138-1002

Address

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: 14 Sheets of Replacement Drawings

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

November 9, 2005

Date

David J. Cole

Signature

David J. Cole

Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/289,507
Application of: Drzaic, et al.
Confirmation No. : 8699
Filed: April 9, 1999
Group Art Unit: 2673
Examiner: Nguyen, Jimmy H.

Attorney Docket No.: INK-039
Customer No.: 26245

Cambridge, Massachusetts
November 9, 2005

**STATEMENT IN SUPPORT OF PETITION TO REVIVE ABANDONED
APPLICATION UNDER 37 CFR 1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

I, David J. Cole, of E Ink Corporation, 733 Concord Avenue, Cambridge MA 02138-1002, being a registered patent agent, Registration No. 29629, and being duly cognizant of the provisions of 37 CFR 10.18, do hereby make the following statement in support of the Petition to Revive the above application filed herewith. All statements herein are made of my own personal knowledge, supported where necessary by reference to the business records of E Ink Corporation.

1. Since November 1999, I have been the Intellectual Property Counsel of E Ink Corporation (hereinafter "E Ink"), the assignee of the above application. I am the only qualified patent professional at E Ink, and in that capacity have responsibility for all patent applications of E Ink, although until early 2005 many of the patent applications were handled by outside counsel.

2. Prior to my arrival at E Ink in November 1999, E Ink had no in-house patent professional, and patent filings were handled by outside counsel under the direction of various E Ink executives. The present application was filed in this manner in April 1999 by Testa, Hurwitz & Thibault, LLP., E Ink's main outside patent counsel.

3. After my arrival at E Ink, I reviewed correspondence from the Patent Office concerning this application, as reported by outside counsel, and on several occasions sent instructions to the outside counsel instructing them as to the general approach which E Ink wished to take in the prosecution of this application. However, since Testa, Hurwitz proved themselves, in my extensive experience with them, to be very competent counsel, I left the detailed drafting of papers relating to this application to them. Also, formal matters, such as filing formal drawings, were left to the discretion of the outside counsel.

4. In January 2005, E Ink was advised that Testa, Hurwitz would dissolve in March 2005. Consequently, E Ink decided to move numerous applications previously handled by outside counsel, including the present application, "in house" so that I would henceforth be directly responsible for the prosecution of this application rather than acting through outside counsel. Accordingly, I personally prepared and filed, on March 30, 2005, a brief Amendment After Final Rejection, and supporting papers. This filing of March 30 was the only filing made by me personally prior to the issue of the Notice of Allowance on April 11, 2005. Subsequently, on April 29, 2005, I filed a Change of Correspondence Address (Form PTO/SB/122) and an accompanying Statement Under 37 CFR 3.73(b) to change the correspondence address for this application to E Ink's Customer No. 26245.

5. The Notice of Allowance and Notice of Allowability were mailed on April 11, 2005 to Testa, Hurwitz, and there was some delay in forwarding these papers to me since by this time Testa, Hurwitz had dissolved and only a skeleton staff was left in their office. Also, when these papers were received in my office, two entries should have been made in our computerized docketing system, the first for payment of the issue fee and the second for filing of the formal drawings, as required by the Notice of Allowability. I have checked our docketing system while preparing this Statement and confirmed that the first entry was correctly made, but the second entry was not made.

6. At a May 9, 2005 meeting of E Ink's Intellectual Property Committee (a committee of E Ink senior managers which supervises my work and makes decisions about E Ink's patent program) I was instructed to pay the issue fee and issue a patent upon the present application. Accordingly, on June 1, 2005 I paid the issue fee for this application. When paying the issue fee, it was of course my intention to complete all matters needed to issue a patent on this application, since otherwise there would be no point to paying the issue fee. However, when paying the issue fee, I inadvertently failed to notice the portion of the Notice of Allowability relating to the requirement for formal drawings, and the aforementioned error in the docketing system meant that the docketing system also failed to draw attention to this requirement. Accordingly, no formal drawings were filed within the prescribed period.

7. While I recognize that I was negligent in failing to check that all the requirements of the Notice of Allowance and Notice of Allowability were completed within the prescribed period, I believe that my inadvertent failure to file the necessary formal drawings is more understandable in view of the unusual history of this case. It has been my practice, for at least the last four years, to file all my E Ink applications with formal drawings; see for example U.S. Patent Publications Nos. 2005/0105162; 2005/0105159; 2005/0078099; 2005/0062714 and 2005/0041004, all filed by me with E Ink as assignee and all filed with formal drawings. Furthermore, when there is an objection to the drawings in an Office Action, the Office does not now allow the objection to be held in abeyance but requires immediate correction of drawings. Accordingly, it is very unusual for me to receive a Notice of Allowability requiring the filing of formal drawings, and indeed this is the only such Notice of Allowability I can remember receiving at E Ink in a case I was handling directly.

8. Since the last date for paying the issue fee (and for filing the formal drawings) was July 7, 2005, I expected the patent to issue approximately 3½ months later, or about the end of October 2005. Also, from June 1, 2005, when I paid the issue fee, onwards I was under the impression that everything necessary for the issue of a

patent had been done, and I had no reason to consult the file of this application. The first indication I received that anything was wrong and that the patent would not issue on schedule was on October 31, 2005 when I checked the "Private PAIR" system for recent correspondence from the Office and discovered that the Notice of Abandonment had been issued. The hard copy of the Notice of Abandonment was received on the following day, and the present Petition was filed promptly after receipt of this hard copy.

9. For the foregoing reasons, I consider that the abandonment of the above application by failure to file the required formal drawings was unintentional, and that the entire delay between the prescribed date for the filing of these formal drawings and the date on which they are filed with the present Petition was unintentional, and hence that the present Petition is justified under 37 CFR 1.137(b).

Respectfully submitted



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Cambridge MA 02138

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Fax (617) 499-6200
E-mail dcole@eink.co



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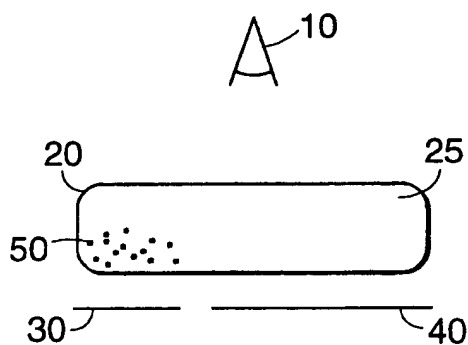


FIG. 1A

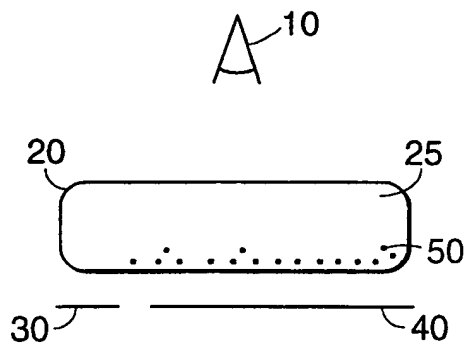


FIG. 1B

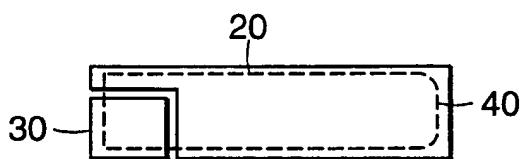


FIG. 1C

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A-10

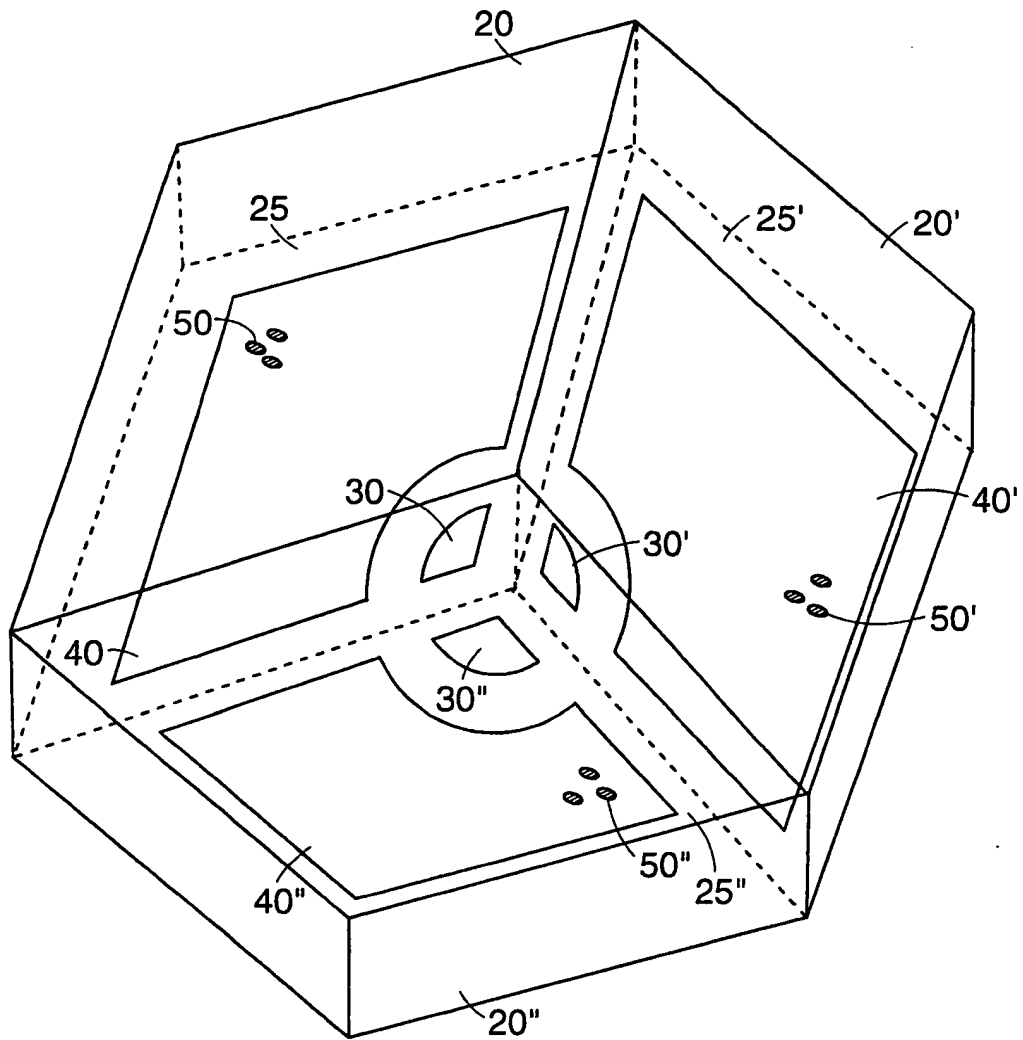


FIG. 1D

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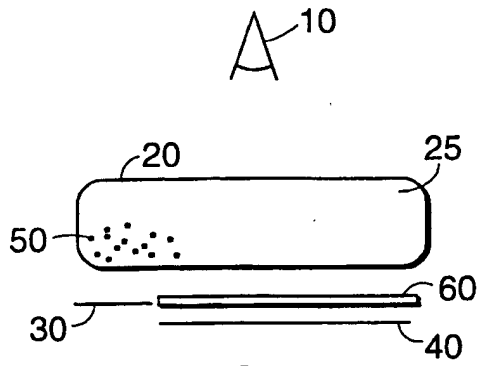


FIG. 2A

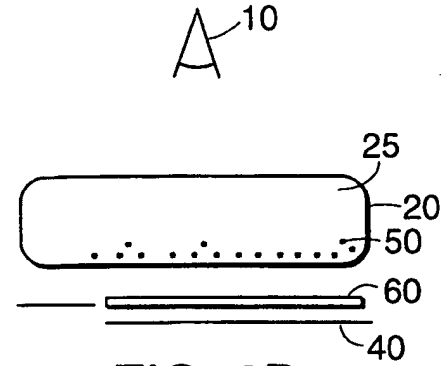


FIG. 2B

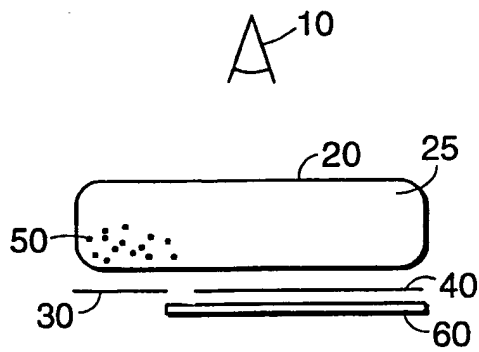


FIG. 2C

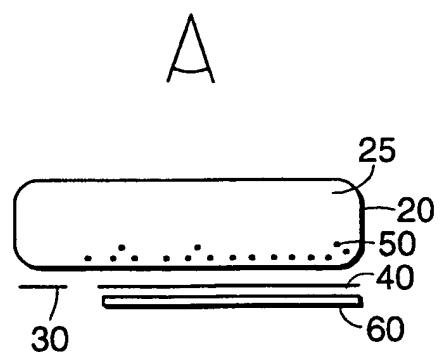


FIG. 2D

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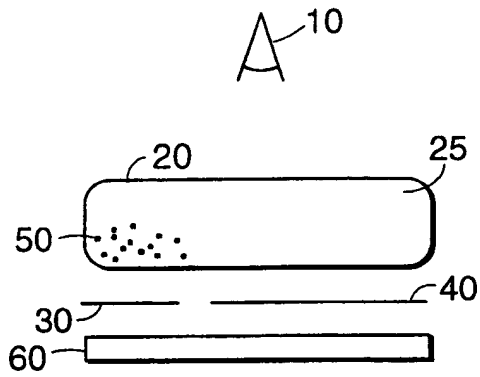


FIG. 3A

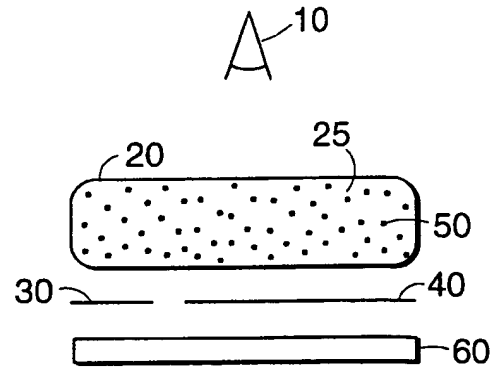


FIG. 3B

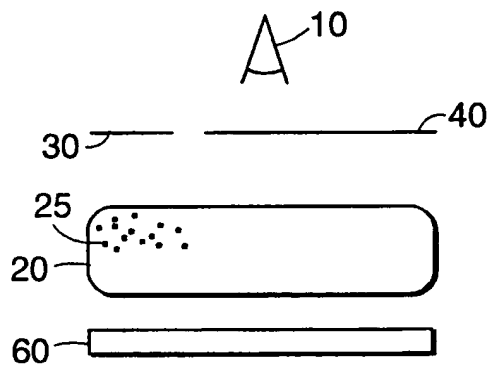


FIG. 3C

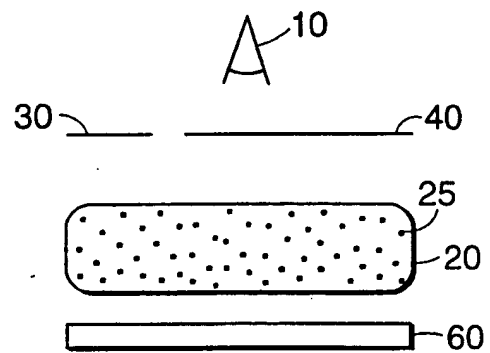


FIG. 3D

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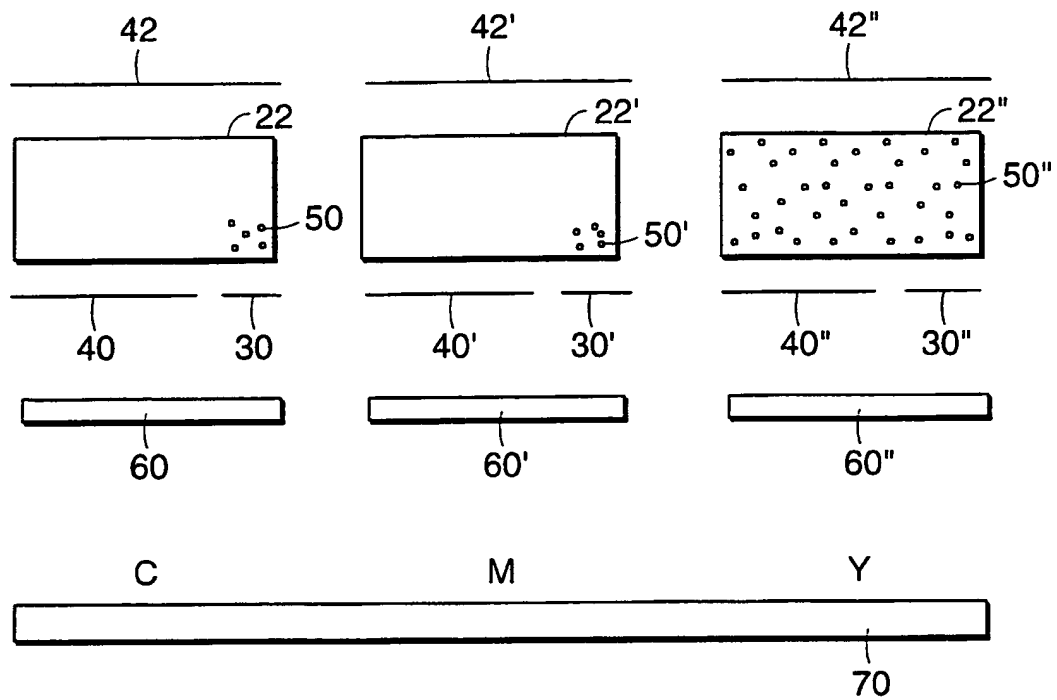


FIG. 3E

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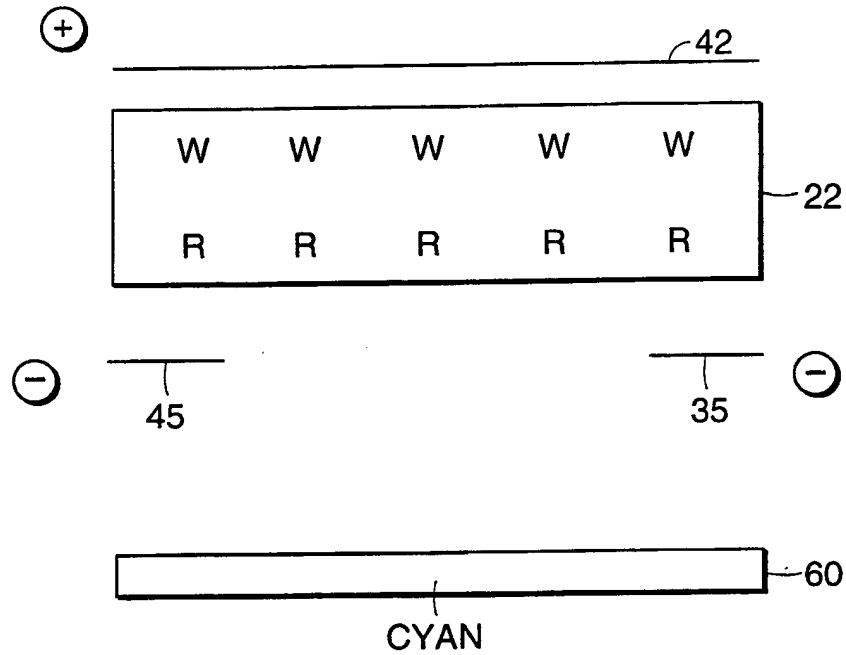


FIG. 3F

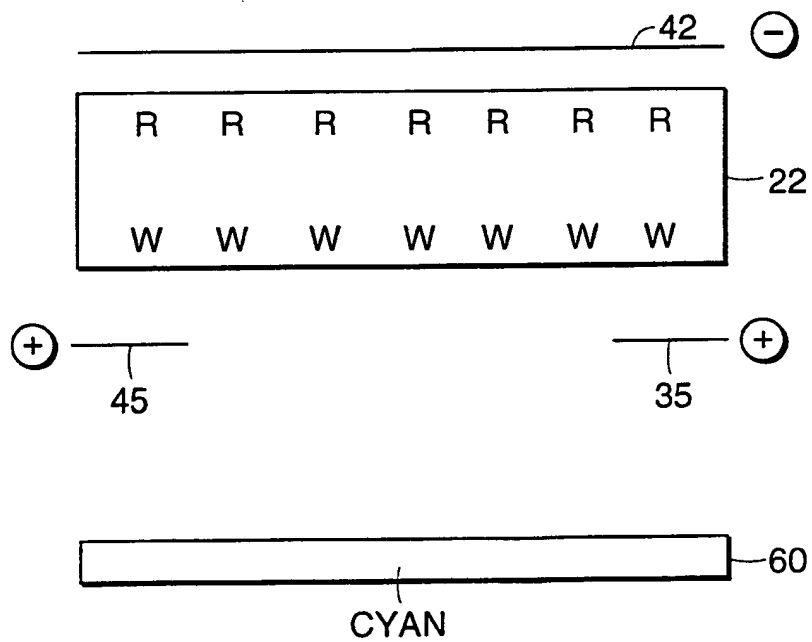


FIG. 3G

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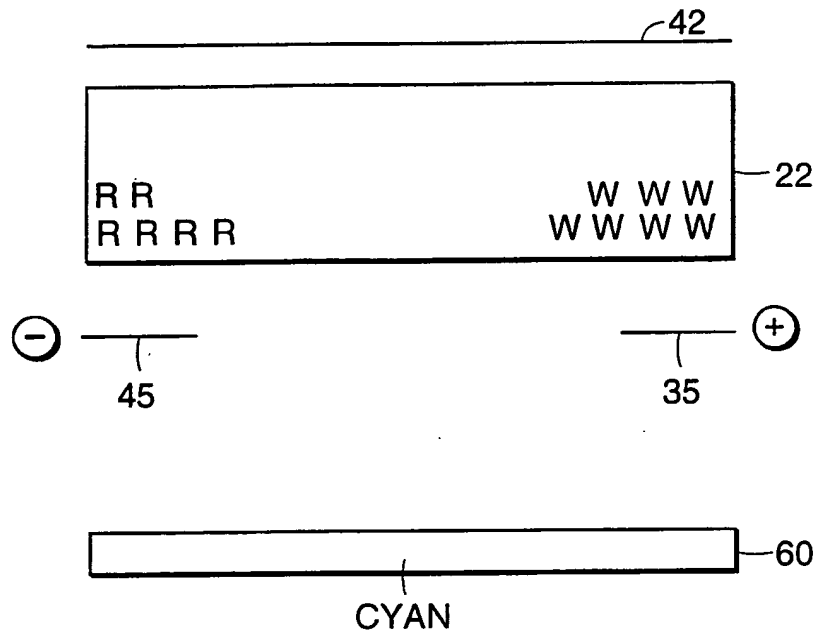


FIG. 3H

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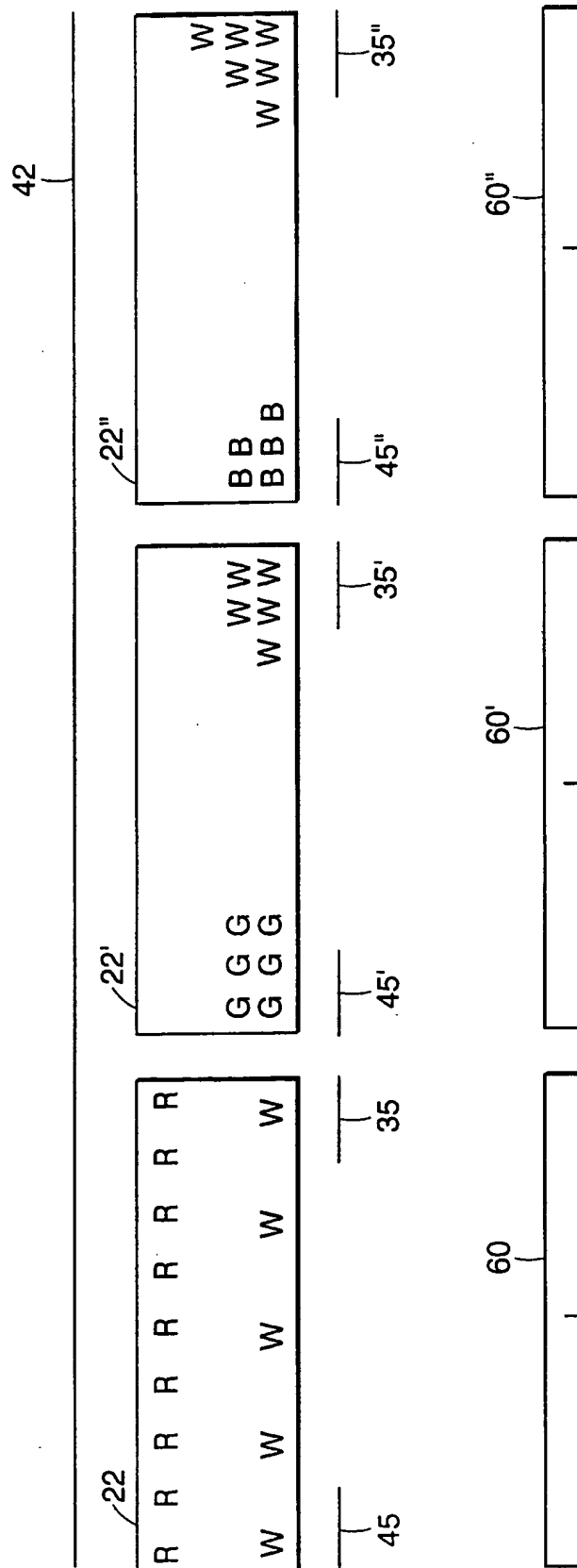


FIG. 31

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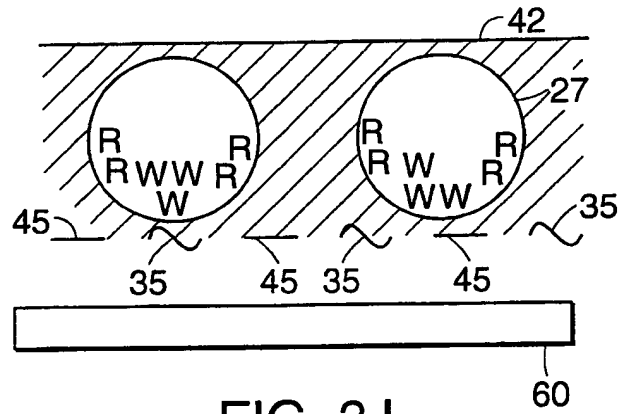


FIG. 3J

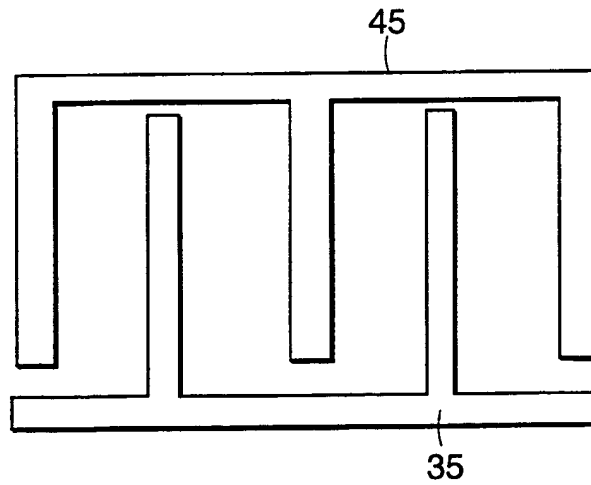


FIG. 3K

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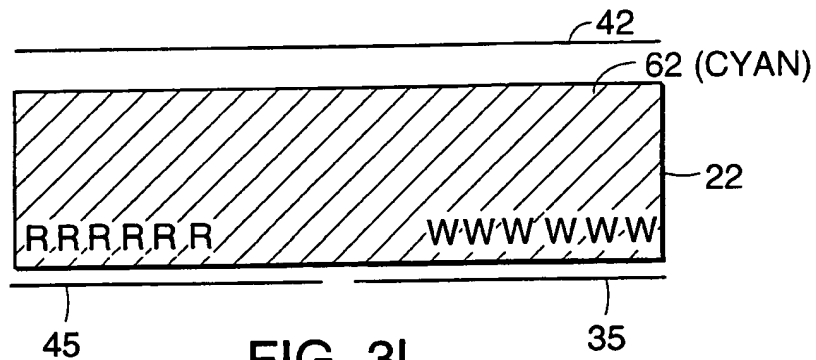


FIG. 3L

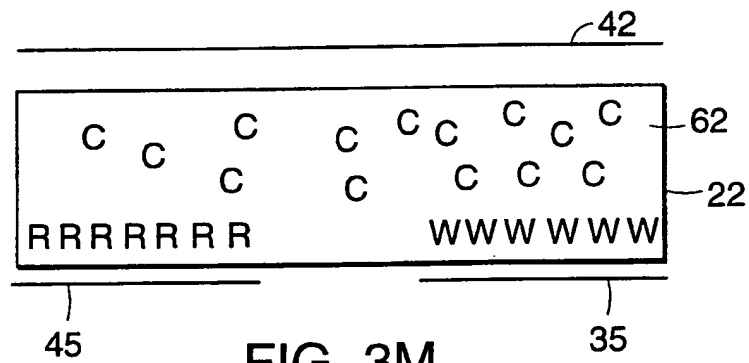


FIG. 3M

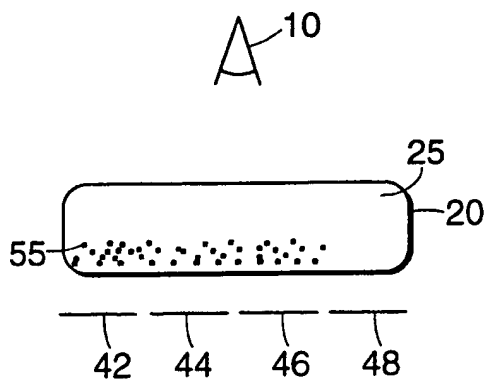


FIG. 4A

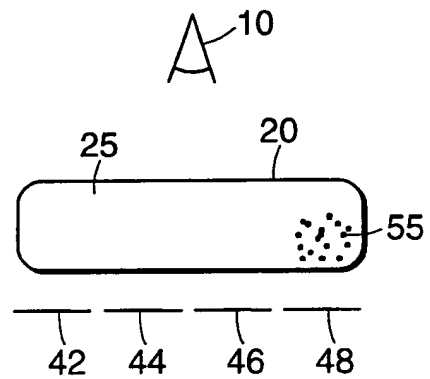


FIG. 4B

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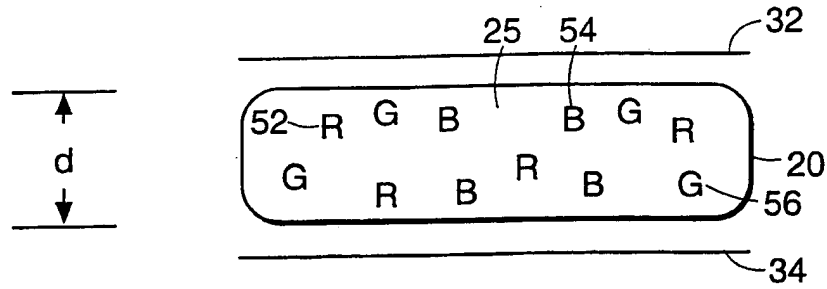


FIG. 5

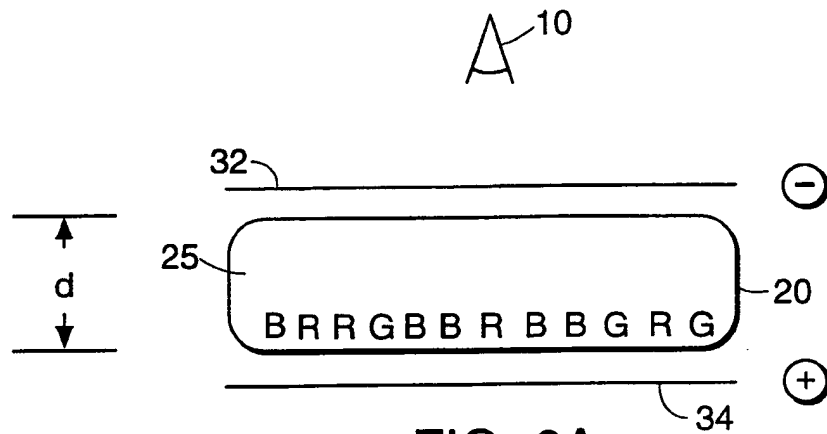


FIG. 6A

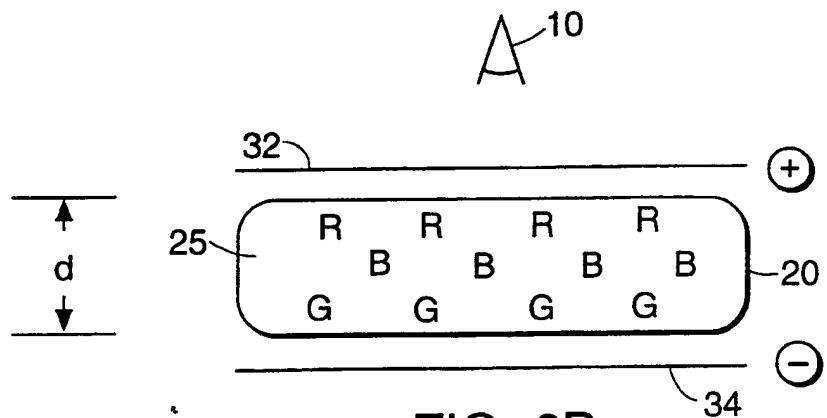


FIG. 6B

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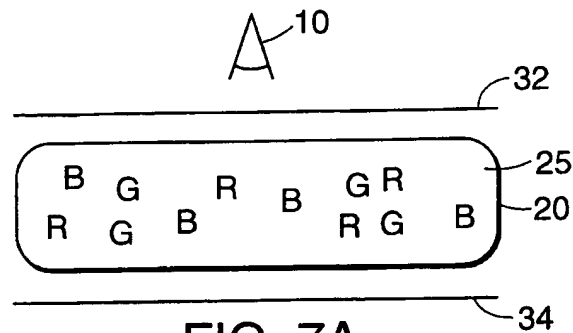


FIG. 7A

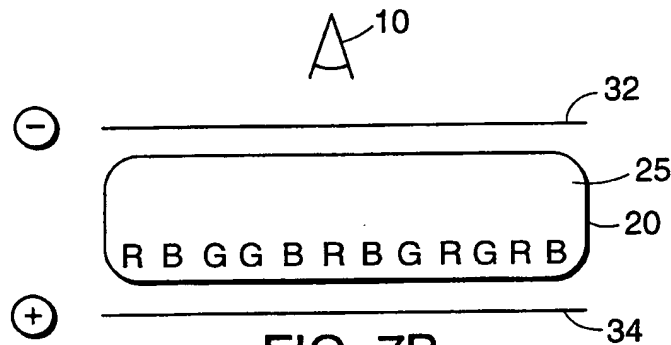


FIG. 7B

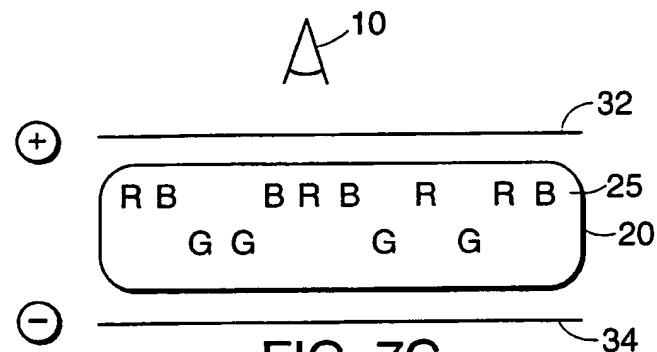


FIG. 7C

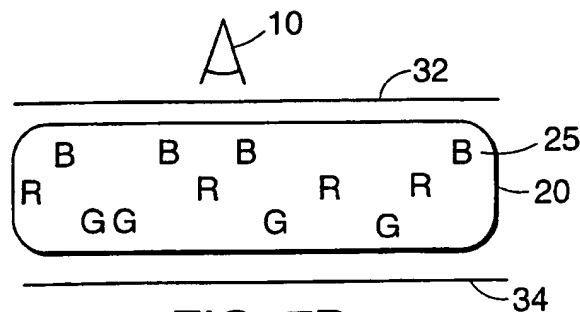
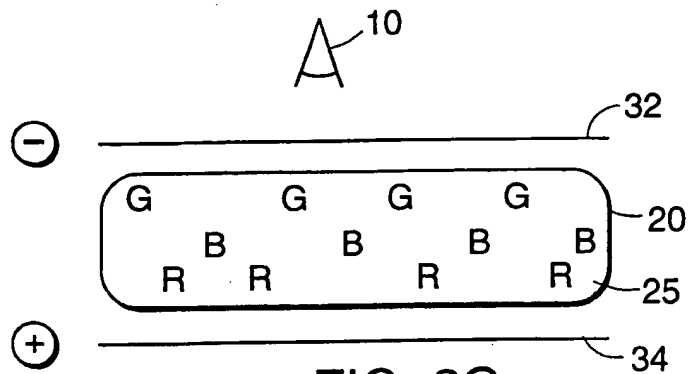
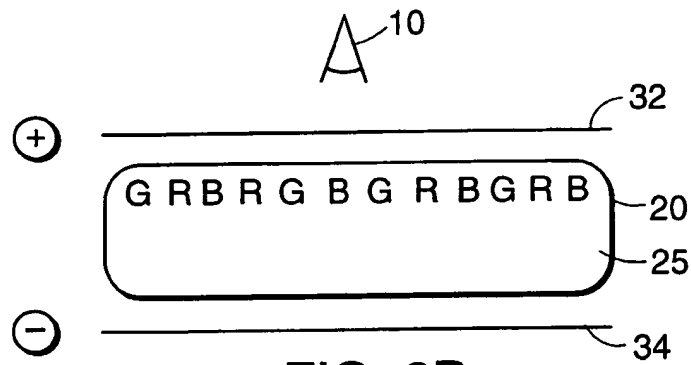
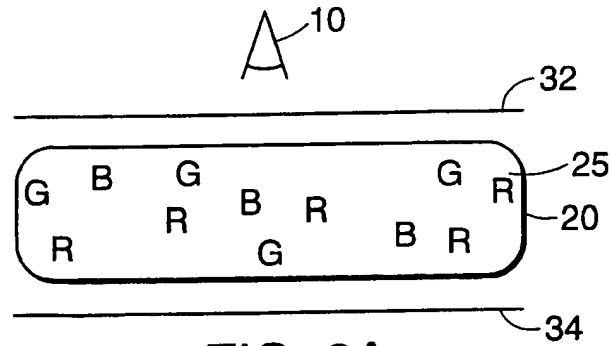


FIG. 7D

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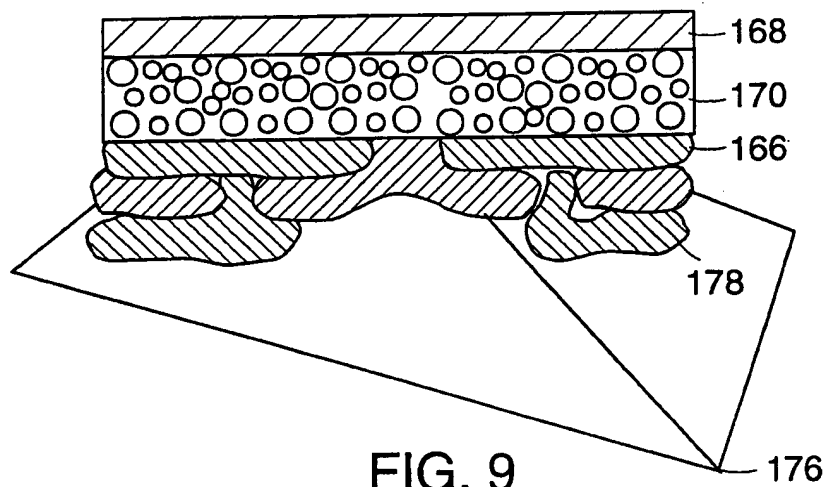


FIG. 9

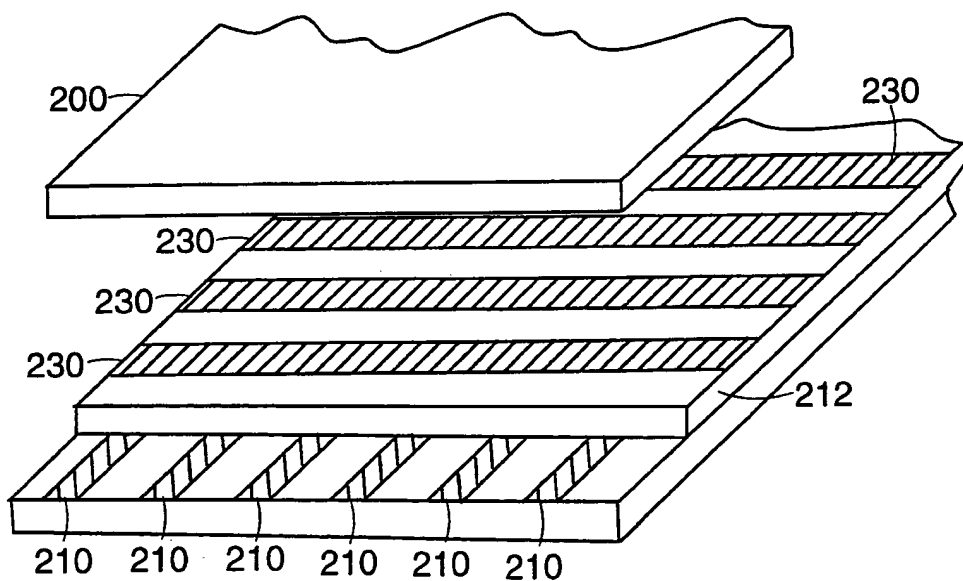
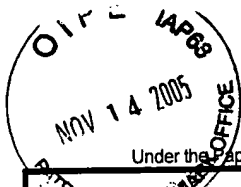


FIG. 10



PTO/SB/17 (12-04)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/8/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005		Complete if Known	
		Application Number	09/289,507
		Filing Date	04/09/1999
		First Named Inventor	Drzaic, et al.
		Examiner Name	Nguyen, Jimmy H.
<input checked="" type="checkbox"/> Applicant Claims small entity status. See 37 CFR 1.27		Art Unit	2673
TOTAL AMOUNT OF PAYMENT		(\$)	750.00
		Attorney Docket No.	INK-039

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 501162 Deposit Account Name: E Ink

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below☐ Charges fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s)
under 37 CFR 1.16 and 1.17☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Small Entity Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
0	- 20 or HP = 0	x \$25.00 = \$ 0.00
HP = highest number of total claims paid for, if greater than 20		
Indep. Claims	Extra Claims	Fee (\$)
0	- 3 or HP = 0	x \$100.00 = \$ 0.00
HP = highest number of independent claims paid for, if greater than 3		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41 (a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
0	- 100 = 0	/ 50 = 0 (round up to a whole number) x \$125.00 =	\$ 0.00	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Fee Code 2453: Petition to Revive Unintentionally Abandoned Application \$750.00**SUBMITTED BY**

Signature	<u>David J. Cole</u>	Registration No. (Attorney/Agent)	29629	Telephone	(617) 499 6069
Name (Print/Type)	David J. Cole	Date	November 9, 2005		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.